No. 31

In the Supreme Court of the United States

OCTOBER TERM, 1956

CONTINENTAL MOTORS CORPORATION, A VIRGINIA CORPORATION DOING BUSINESS IN THE STATE OF MICHIGAN, AND UNITED STATES OF AMERICA, INTERVENOR, APPELLANTS

v.

TOWNSHIP OF MUSKEGON, A MUNICIPAL CORPORATION, COUNTY OF MUSKEGON, A MUNICIPAL CORPORATION, ORCHARD VIEW RURAL AGRICULTURAL SCHOOL DISTRICT NO. 5, MUSKEGON TOWNSHIP, A MUNICIPAL CORPORATION

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

JURISDICTIONAL STATEMENT OF THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
CHARLES K. RICE,
Assistant Attorney General.
HILBERT P. ZARKY,
LYLE M. TURNER,
Attorneys,
Department of Justice, Washington 25, D. C.

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CITATIONS

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OPINIONS BELOW

The opinion of the Circuit Court of Muskegon County, Michigan, is not reported. The opinion of the Supreme Court of Michigan affirming the judgment of the Circuit Court is reported in 346 Mich. 218. The opinions of the Circuit Court and the Supreme Court of Michigan are set forth in the Appendix, *infra*, pp. 11–25.

JURISDICTION

This suit was brought by the Township of Muskegon and other municipal corporations for the collection of taxes assessed and levied under the provisions of Public Act No. 189, Michigan Public and Local Acts (1953). In defense, appellants Continental Motors Corporation and the United States alleged that the Michigan statute, as applied to the facts of this case, was repugnant to the Constitution of the United States and invalid. The Supreme Court of the State of Michigan decided the question in favor of the validity of the statute and the taxes which it imposed, and entered judgment on June 28, 1956. Notice of appeal was filed by Continental Motors Corporation and the United States on September 14, 1956. Jurisdiction to review a judgment of the highest court of a state by appeal is conferred on this Court by 28 U. S. C. Sections 1257 (2) and 2101 (c). That such jurisdiction exists in the circumstances of this case is sustained by the following decisions: *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282; *Standard Oil Co.* v. *Johnson*, 316 U. S. 481; *United States* v. *Allegheny County*, 322 U. S. 174, 191; *Esso Standard Oil Co.* v. *Evans*, 345 U. S. 495; *Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110.

STATUTE INVOLVED

Michigan Public and Local Acts (1953), p. 252:

PUBLIC ACT No. 189

AN ACT to provide for the taxation of lessees and users of tax-exempt property.

The People of the State of Michigan enact:

SEC. 1. When any real property which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a private individual, association or corporation in connection with a business conducted for profit, except where the use is by way of a concession in or relative to the use of a public airport, park, market, fair ground or similar property which is available to the use of the general public, shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property: *Provided, however,* That the foregoing shall not apply to federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed or property of any state-supported educational institution.

SEC. 2. Taxes shall be assessed to such lessees or users of real property and collected in the same manner as taxes assessed to owners of real property, except that such taxes shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee or user to the township, city, village, county and school district for which the taxes were assessed and shall be recoverable by direct action of assumpsit.

This act is ordered to take immediate effect.

Approved June 10, 1953.

QUESTIONS PRESENTED

1. Is Act 189 of the Public Acts of Michigan (1953), as here applied, repugnant to the Constitution of the United States and invalid for the reason that, without

the consent of Congress, it imposes a tax upon property of the United States used exclusively for the production of defense materials for the United States?

2. Is Act 189 repugnant to the Constitution of the United States for the reason that it taxes the property of the United States—to the full extent of its value—to its lessee or user to the same extent and in the same manner as though such lessee or user were the owner of the property?

3. If Act 189 may be construed as imposing a privilege tax, is it repugnant to the Constitution of the United States, as here applied, because it would tax the privilege of using federal property placed in the possession of the user for the limited and sole purpose of providing materials for the common defense and supporting the army, and would constitute an undue interference with the constitutional right of the Congress to dispose of and make all needful rules and regulations respecting the property belonging to the United States?

4. If Act 189 may be construed as imposing a privilege tax, is it repugnant to the Constitution of the United States and invalid because it is discriminatory in its purpose and effect and is primarily directed at collecting from users of federally-owned property a tax with respect to property of the United States which the state cannot assess or collect from the United States or its property?

5. Is immunity of federal property from taxation by a state determined by weighing the claimed burden upon a community or municipality against the benefits

which the community or municipality derives as a result of the federal activity?

6. Is Act 189 repugnant to the Constitution of the United States and invalid as violative of the due process and equal protection clauses of the Fourteenth Amendment because it taxes to Continental Motors Corporation property, or the value of property, which Continental Motors Corporation does not own, but which the Act conclusively presumes it does own?

STATEMENT

On January 1, 1954, the United States was the owner in fee simple of two parcels of property, on which there were improvements consisting of a manufacturing plant (Plancor 166), located in Muskegon Township, Muskegon County, Michigan.

This property, together with a large amount of personal property consisting of machinery, equipment and other industrial facilities, was furnished without charge by the United States to Continental Motors Corporation under a permit, the property to be occupied and used by the latter solely for the purpose of performing certain contracts to produce military equipment and supplies for the Army.

In producing such equipment and supplies no part of the cost of the facilities in the form of depreciation or amortization could be included by Continental Motors Corporation in the price of the end items under the related supply contracts for which the facilities were authorized for use. (R. 145.)

The Supervisor of Muskegon Township made an assessment of all of the real property in his town-

ship liable to taxation on tax day, i. e., January 1, 1954, at the true cash value, as required of him under Section 211.27, Compiled Laws of Michigan (1948); Section 7.27, 6 Michigan Statutes Annotated.

Also, pursuant to Act No. 189, Public Acts of Michigan (1953), the Supervisor valued at their true cash value the two parcels of land and improvements constituting the property of the United States known as Plancor 166. He valued these parcels precisely as he would have done had they been owned in fee simple and occupied by Continental Motors Corporation; that is, he valued them at the true cash value of their fee simple ownership on the basis defined in Section 7.27, 6 Michigan Statutes Annotated, giving consideration to the advantages and disadvantages enumerated in that section. These valuations were set down on the tax rolls of the township opposite the description of the parcel to which each pertained and tax bills were thereafter issued by the Treasurer's office of the Township to Continental Motors Corporation. These bills were computed by applying the regular 1954 property tax rates established for the Township, County, School and School Debit, as were applied to other properties owned by private persons and which made up a part of the same assessment roll. (R. 198-201).

The parcels of property were not assessed to their occupant pursuant to Section 211.3, Compiled Laws of Michigan (1948); Section 7.3, 6 Michigan Statutes Annotated, and the Supervisor at no time ever separately valued the right granted by the United States

to Continental Motors Corporation to use and occupy the parcels constituting the property known as Plancor 166.

Continental Motors Corporation is a corporation, organized and conducted for the purpose of making a profit, and it made a profit from its performance of its contracts with the Army wherein it was permitted to occupy and use Plancor 166.

The taxes assessed to Continental Motors Corporation were not paid. The Township of Muskegon and the other municipal corporations concerned brought suit for the amount of the assessed taxes in the Circuit Court of Muskegon County and the United States intervened as a party-defendant.

On August 23, 1955, a judgment was entered by the trial court in favor of the plaintiffs pursuant to a written opinion. (R. 216.)

On appeal, the Supreme Court of Michigan approved the decision of the trial court, thereby sustaining the tax and the validity of Public Act No. 189.

The appellants contended at every stage of the proceedings that Act 189 is repugnant to the Constitution of the United States and invalid in that it authorizes a tax upon real property owned by the United States of America, infringes the sovereign immunity of the United States, and violates the Fourteenth Amendment of the Constitution. The constitutional questions were raised in the trial court in the Answer filed by Continental (R. 9–12), were incorporated by reference in the intervening petition of the United States (R. 16); and were urged in the

briefs filed in the trial court and the Supreme Court of Michigan. The constitutional questions were considered but rejected both by the trial court (R. 210–216) and the Supreme Court of Michigan (Appendix, *infra*, pp. 11–18).

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents precisely the same basic question as is now pending before this Court on appeal in *United States and Borg-Warner Corp.* v. *City of Detroit*, No. 487, October Term, 1956. In both cases the constitutional validity of local taxes assessed under the authority of Michigan Public Act No. 189 on property owned by the United States and occupied by private parties is involved.

Factually, the two cases differ only in two respects. The property in the *Borg-Warner* case was strategically important to the national defense in the event of an emergency. But it was not, for the time being, needed for the present production of defense materials. It was leased on a standby basis which permitted its temporary use for commercial purposes but insured that it would be available when needed by the United States. In authorizing the defense department to make such leases, Congress expressly provided that the lessee's interest, but only the lessee's interest, should be subject to state or local taxes. Act of August 5, 1947, c. 493, 61 Stat. 774, Sec. 6 (10 U. S. C. 1952 ed., Sec. 1270d), the so-called Military Leasing Act. The Michigan statute did not confine itself to the taxation of that limited interest. It taxed the whole property as though the lessee, and not the

United States, were its owner, disregarding the terms of the Congressional consent.

In the present case, Plancor 166 was occupied by Continental Motors under an occupancy permit. This permit was granted by the Department of the Army solely for the purpose of, and limited to, the production of materials needed by the Army as a part of the national defense. Thus, the present case differs from the *Borg-Warner* case in the use to which the plant was put. However, these differences do not detract from the conclusion that in each case, under principles established by this Court, the local tax here involved represents an undue and unconstitutional interference with the sovereign right of the United States freely to possess or dispose of its property.

The Supreme Court of Michigan in the instant case reaffirmed the basis of its decision in the *Borg-Warner* case. For the reasons set forth at length in the Jurisdictional Statement in the *Borg-Warner* case, we believe that basis to be erroneous.

In addition, however, to reaffirming its decision in the *Borg-Warner* case, the Supreme Court of Michigan in its opinion here (Appendix, *infra*, pp. 13–17) sought to strengthen the result reached by emphasizing its assumption that, unless this tax is upheld, the property of the United States would not adequately contribute to the burden imposed upon local public agencies and others by its presence and by the presence of the personnel employed by the user of the property. Even assuming the existence, as the Supreme Court of Michigan did, of a disparity in the

benefits from and the burdens of federal activity in the community involved," such ground has been rejected by this Court as a justification for an otherwise unconstitutional tax on the property or activities of the United States. *United States* v. *Allegheny County, supra; Kern-Limerick* v. *Scurlock, supra.*

CONCLUSION

The questions presented by this appeal are substantial and important. It is respectfully submitted that probable jurisdiction should be noted.

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

HILBERT P. ZARKY,
LYLE M. TURNER,
Attorneys.

NOVEMBER 1956.

APPENDIX

State of Michigan Supreme Court

[Caption omitted.]

Opinion

Before the Entire Bench.

BLACK, *J.* This case is a direct descendant of *Continental Motors Corporation* v. *Township of Muskegon et al.*, —— Mich ——. It marks the second and separate effort of a corporation hailing from Virginia and doing business for profit in Muskegon township to find legal means of transferring its more than substantial share of the cost of local government to the shoulders of local payers of property taxes.

The property known in the records of both cases as Plancor 166 was deeded May 6, 1953 by RFC to the United States with result that on the next ensuing tax day (January 1, 1954) Plancor 166 concededly became and remained exempt from taxation. The fact of such conveyance was noted in the cited case at page — of report and it with this suit transfers judicial attention from determination of validity of property taxes levied against Plancor 166, when title thereto stood in the name of RFC, to question whether the plaintiff taxing authorities lawfully assessed Continental, as continuing lessee for profit of Plancor 166 after title thereto passed to the United States, pursuant to PA 1953, No. 189.[1]

[1] CLS 1954, Secs. 211.181, 211.182 [Stat Ann 1955 Cum Supp Secs. 7.7 (5), 7.7 (6)]. The title clearly indicates the legislative purpose. It reads: "AN ACT to provide for the taxation of lessees and users of tax-exempt property.".

Turning now to Continental's status under said act 189 in connection with the present suit: The supplemental agreement, by which Continental continued to use and occupy Plancor 166 following transfer of title to the United States, contains this self-explanatory covenant:

> 6. The contractor[2] shall pay to the properly constituted authority or authorities as and when the same may become due and payable all taxes, assessments, excises and similar charges which may be lawfully taxed, assessed or imposed upon the Contractor with respect to or upon Plancor 166 or any part thereof, provided, however, that such taxes, assessments, excises or similar charges shall be prorated and apportioned as of the date of this Agreement and as of the date of determination thereof respectively. Nothing herein contained, however, shall prohibit the Contractor from contesting in good faith the validity of any such taxes for assessments.

The 1954 assessment having been levied against Continental under said act 189 in the total sum of $84,051.76, and Continental having refused to pay, this suit to recover the levy followed. Trial to the court, Honorable Raymond L. Smith, circuit judge presiding, resulting in judgment for the plaintiff local units in accordance with their declaration and the present appeal by Continental to this Court. The substantial questions before us are stated by Continental as follows:

> 1. Does Act No. 189 of the Public Acts of Michigan for 1953 impose an ad valorem property tax or a privilege tax?
>
> 2. Is Act No. 189 of the Public Acts of Michigan for 1953 invalid because it attempts to

[2] Continental is the "Contractor".

> impose an ad valorem tax upon real property which was owned by the United States, was used solely for its benefit and was otherwise immune from local ad valorem taxation by the mere device of stating that it was taxing the lessees or users thereof in the same amount and to the same extent as though such lessee or user was the owner of such property and thus attempts to defeat the impact of Federal constitutional immunity?
>
> 4. Even if Act No. 189 of the Public Acts of Michigan for 1953 imposes a privilege tax is it invalid as a privilege tax because it is discriminatory in purpose and effect, and is primarily directed at Federally-owned property and designed to subject to state taxation property which is constitutionally immune from such taxation?

Stated questions 1 and 2 were firmly resolved against Continental's contention in *United States* v. *City of Detroit*, —— *Mich.* ——, and it is unnecessary to repeat what was said of such issues on that occasion. Stated question 4, dealing with alleged invidious discrimination against lessees of tax-exempt property engaged as the statute says in "business conducted for profit", deserves and will receive consideration.

Continental's counsel say, in support of question 4:

> It should also be noted that those subject to the Act are obliged to pay a tax which they cannot collect from the owner. No remedy has been provided for that purpose and any remedy, if it had been provided, would be ineffective against the sovereign rights of The United States. On the other hand, lessees of the vast bulk of the real property in this State, if they are taxed at all under 7.3 M. S. A., are given an effective remedy to collect such taxes from the owner of such realty [7.97, M. S. A.].

> Thus, those few subject to Act 189, who use Federally-owned tax-immune realty, find themselves carrying a burden not imposed upon any other lessee or user of real property in this State. This too constitutes an unlawful discrimination against those engaged in the use of Federally-owned real property.

The contention is without merit. Indeed, when it is searchingly examined in light of the companion records that are before us, we should in my view conclude that the legislature by act 189 has wisely effectuated its continuing duty of providing equal burdens and equal privileges for those of corresponding or similar situation. Without act 189 a lessee or user for profit of federally-owned tax-immune realty becomes specially privileged and notably favored over his local classmates, and I refer to that class which directly shares the burdens as well as the benefits of local government. As counsel for plaintiffs say:

> When a large and valuable piece of property (Cost, $8,352,768.30) which is tax exempt, is turned over, *rent free,* to a "private individual, association or corporation" for use "in connection with a business conducted for profit"; it is quite obvious that the one having the use of such property has a valuable privilege. The one having the use of such property enjoys the benefits of police protection, fire protection, roads, schools for the children of his employees and the other benefits of local government.

Counsel conclude with observation that one enjoying such a privilege should, as a matter of justice, be required to contribute to the support of his or its local units of government. While they do not elaborate further, I think we should record sua sponte some of

the facts proving dire and present accuracy of their representations in the field of education—, a field corporations like Continental eagerly reap when the crops thereof ripen in our engineering schools. June 23, 1952 the plaintiff school district voted to issue bonds in the sum of $385,000 "for the purpose of erecting and furnishing an addition to the existing new school building in said district." The electors simultaneously provided 6 mills in accordance with Constitutional practice to support the issue. The bonds could not be sold. The reason is disclosed, this way, in a subsequent (December 30, 1952) resolution adopted by the board of education:

> Whereas, no bids were submitted for the purchase of the said bonds because of uncertainty expressed by the prospective purchasers relative to the present and future liability for taxes of the Continental Aviation and Engineering Corporation plant [3] located in the said School District, which plant, consisting of the land and buildings thereon, constituted some 52.79% of the total assessed valuation of the entire School District; * * *

In these circumstances of necessity the property taxpayers and electors of the district were compelled at later special election to vote an additional 8 mills, making 14 mills in all extending from 1953 through 1971, to render the bonds salable. When judges consider, as the court did in *Brown* v. *Board of Education of Topeka*, 347 U. S. 483 [4] (—— S. Ct. ——; 98

[3] This is Plancor 166.

[4] This is the first of the so-called segregation cases.

L. ed. 873), that "Today, education is perhaps the most important function of state and local governments.", we arrive at special understanding of legislative purpose in the conception and enactment of act 189. It simply forces lessees and users for profit of tax-exempt lands to shoulder with others of the class the burdens that are attendant upon benefits all of the class receive.

The *Slaughter-House* Cases (16 Wall. 36, 67–72, 21 L. ed. 394, 405–407; *Strauder* v. *West Virginia*, 100 U. S. 303, 307, 308, 25 L. ed. 664–666) were quoted with approval in the *Brown* Case and, while not directly in point so far as act 189 is concerned, the fact of such quotation is worthy of present consideration in that it brings to clearly focused light, again in this century, a predicative purpose of the Fourteenth Amendment that has always accompanied its prohibitory words—that of firm implication of right to positive immunity from legal discrimination. The implication thus becomes a continuing if unenforceable admonition to legislative assemblies of the several states that affirmative vigilance against and enactments preventive of inequality of legal protection are quite in order whenever such inequality exists or threatens. As the court said in Strauder:

> The 14th Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty or property.

Legislation designed toward equality in the sharing of burdens and benefits of local government is reverence for rather than offense to our traditional right to equal protection of the laws. Act 189 is such legislation. It does not discriminate against lessees for profit of exempt property and commendably operates to prevent shocking discrimination in their favor. We accordingly hold as against this latest challenge that act 189 is valid and that the circuit judge was right in entering judgment for the plaintiff local units by force thereof.

The presence of the United States as an intervening party is noted. The Government and its brief are welcome but do not distract from duty of determination whether the named defendant should or should not be judged liable to plaintiffs on account of the matters alleged in the declaration we have before us. This is a common law action brought by plaintiff units of local government. The declaration names a private corporation only as defendant. In the absence of Congressional action the judgment of the court below when and if paid will be retired exclusively by the private defendant and not by the United States. No judgment has been entered against the United States, directly or indirectly. No tax was or is levied against its property and sovereign immunity of the United States from taxation and suit is not involved.

The judgment of the circuit court should be affirmed, with costs to plaintiffs assessed against Continental only.

JOHN R. DETHMERS,
LELAND W. CARR,
Concurred in result.

EDWARD M. SHARPE,
TALBOT SMITH,
EMERSON R. BOYLES,
HARRY F. KELLY,
Concurred with Black, J.

Justice Edwards took no part in this decision.

Signed: EUGENE F. BLACK.
HARRY F. KELLY.
EDWARD M. SHARPE.
TALBOT SMITH.
EMERSON R. BOYLES.

I concur in the result.

Signed: JOHN R. DETHMERS.
LELAND W. CARR.

Endorsed: Filed June 28, 1956.

HUGH H. CARPENTER,
Clerk Supreme Court.

Circuit Court of Muskegon County

[Caption omitted.]

Opinion

(Filed June 29, 1955)

Plaintiffs bring this action for the collection of taxes assessed in the amount of $84,658.20 for the year 1954 against the defendant Continental Motors Corporation with respect to certain real estate, and improvements thereon, owned by the United States but occupied by Continental under permit granted solely for the purpose of producing certain military supplies and equipment for the Department of the

Army. The United States of America was granted leave to intervene as a party-defendant under claim of interest in the litigation which it claimed it was entitled to protect.

On January 1, 1954, the United States of America was the owner of a certain manufacturing plant, Plancor 166, located in Muskegon Township, Muskegon County, Michigan. The United States furnished this plant and its equipment to Continental under a permit to manufacture certain military equipment and supplies. Continental occupied this plant for this purpose without charge on January 1, 1954.

It was stipulated by these parties that the supervisor of Muskegon Township made an assessment of all of the real property in his township liable to taxation on tax day, i. e., January 1, 1954, at the true cash value, as required of him under Section 7.27 M. S. A.

It was further stipulated by these parties that pursuant to Act No. 189 of the P. A. of 1953 [MSA 7.7 (5)], the supervisor also valued as of that date the real property occupied by Continental and owned by the United States, referred to as Plancor 166, precisely as he would have done had such real property been owned in fee simple and occupied by Continental Motors Corporation; that he valued such real property at the true cash value of the fee simple ownership on the basis defined in Section 7.27 M. S. A., giving consideration to the advantages and disadvantages enumerated in such section; that the valuation of the real estate thus determined was $3,000,000.00 for the parcel described in Exhibit 7 and $5,200.00 for the parcel described in Exhibit 8, and such valuations were accordingly set down upon the tax rolls of such township opposite the description of the parcel to which each pertained and the aforesaid

tax bills were thereafter issued by the Treasurer's office of the said Township to the defendant Continental Motors Corporation; that the parcels of real property described in such tax bills were not assessed to the occupant thereof pursuant to Section 7.3, M. S. A., and that the said Supervisor did not determine as of January 1, 1954, the cash value of nor did he ever separately value the right to use and occupy such parcels granted to the defendant, Continental Motors Corporation, by the United States of America.

It was further stipulated by these parties that Continental occupied these premises exclusively for the purposes outlined in the permits, Exhibits 1, 2, 3, and 4; that Continental is a corporation organized for profit, occupied these premises in connection with its business conducted for profit and made a profit out of such operations.

The taxes so assessed to Continental on January 1, 1954, have not been paid and plaintiffs seek to recover them by virtue of Act 189, P. A. 1953.

One of the questions before the court is whether the taxes assessed under Act 189, above, are an invasion of the Federal right of immunity to taxation by another taxing authority. Justice Jackson, in *U. S.* v. *County of Allegheny*, 322 U. S. 174, says:

> Looking backward it is easy to see that the line between the taxable and the immune has been drawn by an unsteady hand.

Certain generalizations appear with frequency in the opinions covering this subject. So we learn that taxes on the properties, functions and instrumentalities of the Government are under constitutional proscription. *Mayo* v. *U. S.*, 319 U. S. 441; *U. S.* v. *County of Allegheny, supra; Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110. At the same time we learn that taxes on the property, functions and profits of

private interest are held valid. *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *Graves* v. *N. Y. ex rel. O'Keefe*, 306 U. S. 466; *Alabama* v. *King & Boozer*, 314 U. S. 1; *Oklahoma Tax Comm'n* v. *Texas Co.*, 336 U. S. 342; and *Esso Standard Oil Co.*, v. *Evans*, 345 U. S. 495. And from the last group of citations we learn that an economic burden is no longer a factor in drawing the line of demarcation. Likewise these cases refer to a so-called new look at the subject of tax jurisdiction. It now appears that if the tax under scrutiny is not a direct tax on the property, function or instrumentality of the Government and if it is not discriminatory it has a chance of survival.

Act 189, P. A. 1953, provides for taxation of lessees and users of tax-exempt property, when leased or used for profit. The incidence of the tax falls upon the lessee or user and not upon the owner. The property covered is all tax-exempt property, whether belonging to the United States Government or to the State of Michigan or any of its municipalities or institutions. The conclusion is that this tax is neither direct or discriminatory.

Defendants lay great store by *U. S.* v. *County of Allegheny, supra*, and the statement found in that opinion to the effect that: "* * * possessions, institutions, and activities of the Federal Government itself in the absence of express congressional consent are not subject to any form of state taxation." There the court held that the value of machinery, owned by the United States Government, could not be added to the value of the real estate, owned by the lessee of the machinery in assessing the value of the plant for the purpose of levying a real property tax. The court considered such a tax a tax upon the government's possessions. In a dissenting opinion, however, Jus-

tice Roberts thought that the court was again reverting to the use of the economic burden factor.

Our own State Supreme Court in *Fed. Reserve Bank* v. *Revenue Dept.*, 339 Mich. 587, at page 598, distinguishes *Esso* and *U. S.* v. *Allegheny County*, both *supra*, by stating:

> * * * reasoning of the court seems to boil down to that same concept, that it is the legal incidence and not the economic burden of a State tax to which the immunity or statutory exemption of a Federal instrumentality extends and that exemption of the intermediate person upon whom the legal incidence of the tax falls is not to be implied, regardless of the fact that he passes its burden on to the United States, so long as congress has not expressly exempted such person therefrom.

So this court concludes that Act 189 does not violate Federal immunity.

A second question before the court is whether Act 189 violates Article X, Section 7 of the Michigan Constitution. Our State Constitution there provides:

> All assessments hereafter authorized shall be on property at its cash value.

Does the fact that Act 189 requires the assessment against the user to be for the same amount as though the user was the owner invalidate the tax? The reasonableness of this requirement is obvious. The worth of real estate bears some relationship to the burden it places upon a community or municipality. A large manufacturing plant brings into a community a relative number of employees with their families, homes and possessions. The burden upon the community is just the same whether the plant is immune from taxation or not. The property owner who is not immune is called upon to pay his fair share. It is equitable that the same basis should be used to require

the user of immune or exempt property to pay its fair share. Any other basis would be unfair to the property owner tax payers. As this court views it this is an indiscriminate feature of Act 189.

While the language of Act 189 is inartistic and incomplete a careful reading of the title and contents results in a conclusion that it was the legislative intent to tax the lessees or users of tax exempt property and not the property or any interest therein. To this extent it is a tax upon a certain class or group who qualify under the definitions and exceptions of the Act. It has characteristics of a specific tax. It is only when we look at the method of computation of the tax that we note any ad valorem features.

Mr. Justice Cooley in his work on Taxation (2d Ed., p. 238) describes ad valorem taxes as follows:

> Ad Valorem Taxes. A large proportion of the duties on imports are of this description, and so, sometimes, are many of the taxes which make up the internal revenue. The statute laying them prescribes the rule, but requires the action of appraisers in *opportioning them* between individuals * * *

In the opinion of the court the State Constitution is not violated because the assessment was made at its cash value. The argument is made that the property taxed is the leasehold interest of the lessee or user. However the language of the Act plainly states that the tax is on the *lessee* or *user*. In effect the Act provides that where the property is exempt from taxation but the lessee or user of the property qualifies the latter shall be taxed the amount that the owner would have paid except for the exemption.

Accordingly the court finds that plaintiffs are entitled to a judgment against defendant Continental Motors Corporation in the amount of the tax, $84,-

658.20 together with such penalties and interest as provided by law, but without costs, a public question being here involved.

Dated June 29, 1955.

(S) RAYMOND L. SMITH,
Circuit Judge presiding.

Judgment of the Circuit Court of Muskegon County, Michigan

(Filed August 23, 1955)

In this cause the plaintiffs having brought suit to recover the sum of $84,658.20 representing taxes assessed to the defendant, Continental Motors Corporation, for the year 1954, together with interest and penalties thereon, and, proofs having been submitted and the Court having considered the arguments and briefs of counsel and having filed a written opinion in the said cause;

It is ordered that a judgment be and the same hereby is entered in favor of the plaintiff and against the defendant, Continental Motors Corporation, in the amount of $84,658.20, together with such penalties and interest as is provided by law, such penalties and interest to be computed and taxed as costs as of the time this judgment is paid, but without the usual taxable costs, however, a public question being involved.

Dated this 23rd day of August 1955.

Approved as to form:

HAROLD M. STREET.
C. W. VAN BLARCOM.

RAYMOND L. SMITH;
Circuit Judge presiding.

Judgment of the Supreme Court of Michigan

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City Lansing, on the Twenty-eighth day of June, in the year of our Lord one thousand nine hundred and fifty-six.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, Emerson R. Boyles, Harry F. Kelly, Leland W. Carr, Eugene F. Black, Associate Justices.

[Caption omitted.]

The records and proceedings of this cause having been brought to this Court by appeal from the Circuit Court for the County of Muskegon, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Circuit Court, there is No Error, Therefore it is ordered and adjudged that the judgment of said Circuit Court for the County of Muskegon be and the same is hereby in all things affirmed, and that the plaintiffs do recover of the Continental Motors Corporation, their costs, to be taxed, and that they have execution therefor.

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